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decision, the contractor may file an appeal no later than 90 days after it receives the contracting officer's final decision.

(2) For certified claims submitted to the contracting officer in excess of \$50,000 where the contracting officer has not issued a final decision within a reasonable time, taking into account such factors as the size and complexity of the claim, the contractor may file a notice of appeal citing the failure of the contracting officer to issue a decision.

(3) For claims submitted to the contracting officer in the amount of \$50,000 or less where the contracting officer has not issued a final decision within 60 days of the contractor's request that a final decision be issued within that time, the contractor may file a notice of appeal citing the failure of the contracting officer to issue a decision.

(4) In lieu of a notice of appeal filed under paragraphs (b)(2) or (b)(3) of this section [Rules 3(b)(2) or 3(b)(3)], the contractor may request that the Board direct a contracting officer to issue a decision within a specified period of time, as determined by the Board, in the event of undue delay by the contracting officer in issuing a decision.

(5) An appeal filed with the Board will be deemed "filed" on the date actually received by the Board if received by 5:30 p.m. local time in Washington, DC, or on the next business day if received after 5:30 p.m.

(c) *Service of the appeal; copies.* An original plus 3 copies of the appeal shall be filed with the Board by hand delivery, express or priority mail, approved commercial carrier (e.g., UPS or FedEx), facsimile, or e-mail, although e-mail is the preferred method of delivery in all Board matters. The use of first class or parcel post mail is strongly discouraged because the delivery delays and screening process for government mail could result in untimely filed appeals. If filed by e-mail or facsimile, the appellant shall provide the original plus 3 copies to the Board by hand delivery or commercial carrier within 2 business days of the e-mailed or facsimile transmitted filing. The appellant shall furnish a copy of the appeal to the contracting officer from whose decision, or failure to issue

the decision, the appeal is taken using the same method or service as for the Board, or an equal or more expeditious method of service. For service of documents once an appeal has commenced, see § 22.7(b) of this part [Rule 7(b)].

(d) *Docketing.* When the Board receives a notice of appeal from the appellant, the Board will promptly docket the appeal and provide written notice of docketing to all parties, or their counsel, with a copy of these rules.

(e) *Consolidation.* The Board, in its discretion, may consolidate cases involving common issues of law or fact.

[73 FR 36258, June 26, 2008, as amended at 73 FR 60610, Oct. 14, 2008]

§ 22.4 Appeal File [Rule 4].

(a) *Duties of the Contracting Officer.* (1) Within 30 days after receipt of the complaint, or within such other period of time as may be established by the Board, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(i) The decision from which the appeal is taken;

(ii) The contract, including relevant specifications, amendments, plans, and drawings;

(iii) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(iv) All documents and other tangible things on which the contracting officer relied in making the decision, and any correspondence relating thereto;

(v) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(vi) Any additional information or evidence considered relevant to the appeal.

(2) Within the same time specified above, the contracting officer shall furnish the appellant a copy of each document he or she transmits to the Board, except those in paragraph (a)(1)(ii) of this section [Rule 4(a)(1)(ii)]. As to the latter, a list furnished to the appellant

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indicating specific contractual documents transmitted will suffice. Documents filed under this rule, and any supplements, shall be organized and filed in accordance with paragraph (d) of this section [Rule 4(d)].

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file provided pursuant to paragraph (a) of this section [Rule 4(a)], or within such other period of time as may be established by the Board, the appellant shall transmit to the Board for inclusion in the appeal file any documents not contained therein which the appellant considers to be relevant to the appeal. Within the same period of time, the appellant shall furnish a copy of such documents to the contracting officer or counsel for the government. Documents filed under this rule shall be organized and filed in accordance with paragraph (d) of this section [Rule 4(d)].

(c) *Continuing duty to supplement the record.* All parties have a continuing duty to supplement the record with relevant documents and tangible things, and the appeal file may be supplemented by any party at any time before the closing of the record. In cases where a hearing is requested, these supplements shall be provided well in advance of the pre-hearing conference so that objections to admissibility may be heard and resolved, to the maximum extent possible, in advance of the hearing. All supplements to the appeal file shall be organized and filed in accordance with paragraph (d) of this section [Rule 4(d)].

(d) *Organization of appeal file.* Only relevant documents and tangible things should be provided as part of the appeal file. Appeal file documents may be originals or true, legible, and complete copies or facsimiles. The appeal file shall be arranged in chronological order with the earliest documents first; bound in a 3-ring binder (or binders) or similar loose-leaf binder(s) no larger than 4 inches in width, except where size or shape makes such binding impracticable; numbered; tabbed; and indexed. Numbering of pages shall be consecutive and continuous from one page to the next (*i.e.*, “Bates” numbered), so that the complete file, including any supplements, will consist

of one set of consecutively numbered pages. Preceding each Bates number shall be a designation “A” for appellant or “R” for respondent, indicating which party provided the document. Multiple binders shall be consecutively numbered and include references on the outside cover and binding that state the range of tab numbers and Bates numbers contained therein. Within each binder, tabs shall separate each document; multiple documents shall not be placed behind a single tab, unless each document is separated by a divider. The appeal file shall include an index identifying each document included in the appeal file by date, brief description of the document, and the tab and Bates numbers where the document can be located in the appeal file. The Board may, in its discretion or upon request of a party, order an alternative organization of the appeal file. If an alternative organization of the appeal file is permitted, such as by document type or topic, documents within that grouping must be presented in chronological order to the extent possible. The Board may impose special requirements on the production of electronic documents and, if any portion of the § 22.4 [Rule 4] file or supplement contains electronic documents, the party submitting such documents shall contact the Board before submission for guidance.

(e) *Submissions on order of the Board.* The Board may, at any time during the pendency of the appeal, require any party to file documents or tangible things as additional exhibits. The Board may also require a party to file printed versions of electronic records or, conversely, may require electronic versions of printed documents.

(f) *Status of documents in the record.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object to consideration of a particular document or documents by filing a written objection. Such objections shall be raised by motion pursuant to § 22.6 of this part [Rule 6] and shall be filed as early as necessary to allow the Board, to the maximum extent possible, to resolve the objection in advance of a

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scheduled hearing, or before the record is closed if no hearing is held.

§ 22.5 Pleadings [Rule 5].

(a) *Complaint.* Within 15 days after receipt of the docketing notice from the Board, or within such other period of time as may be established by the Board, the appellant will file with the Board, if not previously filed with the notice of appeal, a complaint setting forth simple, concise, and direct statements of each of its claims showing that it is entitled to relief; identifying the contract provision or provisions under which relief is claimed; and stating the amount in controversy or an estimate thereof, if known, and/or the relief requested. The complaint shall be limited to those requests for relief which have been presented to the contracting officer and were either denied or not ruled upon by the contracting officer in accordance with § 22.3 of this part [Rule 3]. No technical form is required, but each claim should be separately identified. In the event that the complaint is not filed within the time stated above, the appeal may be dismissed by the Board for lack of prosecution.

(b) *Answer.* Within 30 days after receipt of the complaint, or within such other period of time as may be established by the Board, the contracting officer or counsel for the government shall prepare and file with the Board an answer thereto. The answer shall set forth simple, concise, and direct statements of the government's defenses to each claim asserted by the appellant. Each defense shall be stated with as much particularity as is practicable. Defenses which go to the Board's jurisdiction may be included in the answer, or may be raised by motion pursuant to the provisions of § 22.6 of this part [Rule 6]. Motions in lieu of an answer may be filed only with the advance permission of the Board.

(c) *Small claims and accelerated procedures.* When an appellant elects to use the small claims or accelerated procedures described in § 22.22 of this part [Rule 22], the Board may shorten the time for filing the complaint and answer.

(d) *Amendment of pleadings.* At any time before a hearing on the merits, or

before the closing of the record when a hearing is not held, the Board in its discretion may permit a party to amend its complaint or answer concerning matters that are within the proper scope of the appeal, upon conditions that are just to both parties. The Board, upon its own initiative or upon application by a party, may in its discretion order a party to make a more definite statement of its complaint or answer, or to reply to an answer. When issues within the proper scope of the appeal, but not raised by the complaint and answer, are determined by express or implied consent of the parties as having been raised, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the complaint and answer as may be necessary to cause them to conform to the evidence may be made upon motion at any time, but failure to so amend does not affect the result of the hearing of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the complaint and answer, the Board may allow the pleadings to be amended within the proper scope of the appeal and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the Board that the admission of such evidence would prejudice it in maintaining its appeal or defense on the merits. The Board may, however, grant a continuance to enable the objecting party to respond to such evidence.

§ 22.6 Motions, Briefs, and Other Statements [Rule 6].

(a) *Motions, generally.* Motions shall be made in writing, indicate the relief sought and include the grounds therefor, and be filed with the Board as soon as practicable after the grounds therefor are known and as early as necessary to allow the Board to rule on the motion in advance of a scheduled hearing. Except for motions submitted under paragraph (d) of this section [Rule 6(d)], any party may respond to a motion by submitting a written response to the motion within 10 days of receipt of the motion, and the moving party may reply to the response within 5 days of receipt of the response, except